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Paper No. 6

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OFFICE OF PETITIONS

In re Application of :
Alois Johannes G. Aarts, Jurgen Johannes A. :
Broekman, Jan Maria J. Thewissen, and Geert :
Dijkstra :
Application No. 10/047,449 :
Filed: January 14, 2002 :
Attorney Docket No. 05032-00014 :
Title: PREPARATION OF SATIN WHITE :

DECISION ON PETITION

This is in response to the petition under 37 C.F.R. §1.47(a)¹, filed September 16, 2002.

On January 14, 2002, the application was deposited, identifying Alois Johannes G. Aarts, Jurgen Johannes A. Broekman, Jan Maria J. Thewissen, and Geert Dijkstra as joint inventors. The application was deposited without an oath or declaration. On February 14, 2002, a "Notice to File Missing Parts of Nonprovisional Application – Filing Date Granted" (Notice) was mailed, indicating that an executed oath or declaration, a surcharge of \$130.00, and the basic filing fee were required. This Notice set a two-month period for reply.

With the instant petition, the petitioner has included the basic filing fee, the filing fee for the petition, the \$130.00 surcharge, a five month extension of time to make timely this reply², a declaration executed by each inventor save Inventor Dijkstra, a declaration of facts of one

¹ A grantable petition under 37 C.F.R. §1.47(a) requires:

- (1) the petition fee of \$130;
- (2) a surcharge of either \$65 or \$130 if the petition is not filed at the time of filing the application;
- (3) a statement of the last known address of the non-signing inventors;
- (4) proof that a copy of the entire application (specification, claims, drawings, and the oath or declaration) was sent or given to the non-signing inventor for review;
- (5) proof that the non-signing inventor refuses to sign the oath or declaration after having been presented with the application papers if the inventor refuses to sign, or proof that diligent efforts have been made to locate the non-signing inventor if he or she cannot be found, and;
- (6) a declaration which complies with 37 CFR §1.63.

² September 14, 2002, and September 15, 2002, fell on a weekend.

Michael Severijn, a statement of facts executed by an attorney of record, and a declaration of facts executed by one Paul Steinhauser.

Petitioner has met requirements (1), (2), (3), and (4) of 37 C.F.R. §1.47(a) above.

Regarding the fifth requirement above, it has not been set forth that the non-signing inventor refused to sign the declaration. Although the declaration of facts executed by Mr. Severijn indicates that a complete copy of the application and the declaration and assignment were sent to the last known-address of the non-signing inventor, it does not state the result. The statement of facts set forth by the attorney of record characterizes the affidavit of Mr. Steinhauser as "evidencing that Geert Dijkstra has refused to execute the declaration and the reasons therefore³", but this statement is unsupported, as nowhere in this statement of fact is the non-signing inventor's refusal addressed. As such, it is not clear how the attorney of record came to this opinion.

Regarding the sixth requirement, petitioner has not submitted a declaration which complies with 37 CFR §1.63, for the following two reasons. First, the declaration submitted with the instant petition contains a non-initialed and non-dated changes by an unknown party⁴. Secondly, the alteration is in blue ink (it appears to be from the same pen used by the three signing inventors), and consists of a large "X" through the signature block of the non-signing inventor. This indicates that at least one of the three signing inventors did not consider the non-signing inventor to have contributed to the inventive process. As such, at least one of the signing inventors did not sign on behalf of himself/herself/themselves and on behalf of the non-signing joint inventor, as is required by MPEP 409.03(a). Furthermore, as MPEP 409.03(a)(A) requires the non-signing inventors to indicate that they are signing on behalf of the non-signing inventor by leaving the signature block of the later blank; this "X" makes it very clear that at least one of the non-signing inventors had no intention of signing on behalf of the non-signing inventor.

Consequently, the petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.47(a)."

The reply to this letter may be submitted by mail^{5,6}, hand-delivery⁷, or facsimile⁸.

The application file will be retained in the Office of Petitions for two (2) months.

³ The attorney of record's statement of facts, paragraph number 3.

⁴ See 37 C.F.R. §1.52(c)(1).

⁵ Commissioner for Patents, Box DAC, Washington, DC 20231.

⁶ Note: as of May 1, 2003, the mailing address for addressing correspondence to the Office will change to: United States Patent and Trademark Office, PO Box 1450, Alexandria, VA, 22313-1450.

⁷ Office of Petitions, 2201 South Clark Place, Crystal Plaza 4, Suite 3C23, Arlington, VA 22202.

⁸ (703) 308-6916, Attn: Office of Petitions.

Telephone inquiries concerning *this decision* should be directed to the undersigned at (703) 305-0011.

A handwritten signature in black ink, appearing to read "Paul Shanowski". The signature is fluid and cursive, with the first name "Paul" and last name "Shanowski" clearly distinguishable.

Paul Shanowski
Attorney
Office of Petitions
United States Patent and Trademark Office